



December 5, 2001

Ms. Mary Ann Slavin
Assistant General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR2001-5656

Dear Ms. Slavin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155773.

The Texas Department of Health (the "department") received a request for copies of documents pertaining to "the relationship and events between the selected 'Best Value' vendor, ATL Inc., and Texas DOH," to include particular proposals. You state that you have released or will release some responsive information. You claim, however, that the submitted information is excepted from disclosure pursuant to sections 552.101 and 552.110 of the Government Code.¹ You further state that the department takes no position as to whether the submitted information is encompassed by either of these exceptions to disclosure. We have considered the exceptions you claim and have reviewed the submitted information.²

Initially, we note that section 552.301 of the Government Code provides certain procedural requirements that a governmental body must abide by in seeking a decision from our office concerning whether requested information may be withheld from disclosure. Section

¹ Although you claim that the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code, you did not provide us with any independent reasons why section 552.101 applies to except the information from disclosure. *See* Gov't Code § 552.301(e)(1)(A). Accordingly, we do not address your section 552.101 claim with regard to the submitted information.

² The requestor also asks the department a question in her request. We note that the Public Information Act does not require a governmental body to prepare answers to questions posed by a requestor. *See* Open Records Decision Nos. 563 at 8 (1990) (considering request for federal and state laws and regulations), 555 at 1-2 (1990) (considering request for answers to fact questions). A governmental body must only make a good faith effort to relate a request to information which it holds. *See* Open Records Decision No. 561 at 8 (1990).

552.301 provides that a governmental body must ask the attorney general for a decision as to whether requested documents must be disclosed not later than the tenth business day after the date of receiving the written request. Gov't Code § 552.301(b). The department received the requestor's written request for information on September 13, 2001. As you acknowledge, you did not request a decision from this office within ten business days of receiving the request. Accordingly, we conclude that the department failed to comply with the procedural requirements of section 552.301 of the Government Code.

When a governmental body fails to request a decision from our office within ten business days of receiving a request, the information at issue is presumed public. *See* Gov't Code § 552.302; *see also* *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.* Normally, a compelling interest is some other source of law that makes the requested information confidential or a demonstration that third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Since you claim that the submitted information is excepted from disclosure pursuant to sections 552.101 and 552.110 of the Government Code, we will address your claims.

Pursuant to section 552.305 of the Government Code, you notified a company who may have a proprietary interest in the requested information, Accelerated Technology Laboratories, Inc. ("ATL") of the request for information. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act under certain circumstances). As of the date of this letter, ATL has not submitted any comments to this office explaining why the submitted information should not be released. Therefore, we have no basis to conclude that any portion of the submitted information is excepted from disclosure pursuant to section 552.110 of the Government Code. *See* Open Records Decision Nos. 552 at 5 (1990) (stating that if governmental body takes no position, attorney general will grant exception to disclosure under statutory predecessor to Gov't Code § 552.110(a) if third party makes *prima facie* case that information qualifies as trade secret under section 757 of Restatement of Torts, and no argument is presented that rebuts claim as matter of law), 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under Gov't Code § 552.110(b) must show by specific factual evidence that release of requested information would cause that party substantial competitive harm). Accordingly, the department must release all of the submitted information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

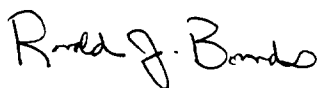
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/sdk

Ref: ID# 155773

Enc: Submitted documents

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